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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,252	09/17/2003	John Michael McClung	MCCS CIP 2A	3735

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EXAMINER

ARYANPOUR, MITRA

ART UNIT PAPER NUMBER

3711

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/664,252	<b>Applicant(s)</b> MCCLUNG ET AL.	
	<b>Examiner</b> Mitra Aryanpour	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 19-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over James, Sr. (6,173,957) in view of Carr (4,330,130) and O'Grady (4,305,587).

Regarding claim 19, James, Sr. shows an apparatus and method of playing a toss game comprising a plurality of discs (projectile 14 or gliding disc 40); a plurality of players (see the abstract of the disclosure) throwing or tossing the discs (14) at a target (12; see column, lines); scoring means (see column 2, lines 49-53 also column 4, lines 57-67 and column 5, lines 1-8), wherein identifying indicia is placed on the targets (12) and on the projectiles (14) in order to differentiate between the different players (14; column 5, lines 10-14). Additionally, James, Sr. shows the discs (14 or 40) may land in one of four positions, lettered A-C and E, and depending on the landing position of the discs, the player is assigned a different level of points. James, Sr. further shows the at least one disc is a plurality of discs (14; see Abstract of the disclosure). James, Sr. shows the projectile (40) is a gliding disc, which has a peripheral wall (42) that is thicker or denser than an interior wall (44) of the disc (40), which adds to the flight stability. James, Sr. further shows the projectile (14) may be formed or constructed in many different shapes that are more or less aerodynamically stable. James, Sr. does not expressly disclose the

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aerodynamic projectile to be a flying disc having a disc body with an annular rim comprising a down-turned lip.

Carr, shows an apparatus and method of playing a game. The method for engaging in an activity, the activity to be engaged in by a plurality of players (see column 7, lines 21-23) wherein each player is provided with at least one disc (flying saucer 23), the disc (23) having a disc body with an annular rim comprising a down-turned lip and having an airfoil profile that creates lift in flight (see column 3, lines 16-21; which indicates that the flying saucer used is of the same type as the Headrick patent 3,359,678, which is describes as an aerodynamic flying disc with an airfoil profile). In view of Carr it would have been obvious to use the projectile of Carr for the gaming device of James, Sr., the motivation being to provide an aerodynamically stable projectile.

James, Sr. additionally does not disclose expressly the indicia on the projectile to be a score value indicator. However, James, Sr. teaches that other scoring methods can be employed in order to play the game (see column 5, lines 25-31). O'Grady shows a tossing game wherein the game includes projectiles having identifying indicia (color) and score value indicators (scoring numbers) and a target also having point values. Points are awarded to players in plurality of different ways (see column 3, lines 10-25). In view O'Grady it would have been obvious to include point values on James, Sr.'s projectiles, the motivation being to designate additional point when the projectile lands in a designated spot on the target.

Regarding claim 20, James, Sr. shows the plurality of players is divided into at least two opposed teams (James, Sr. teaches any number of players and play).

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Regarding claim 21, James, Sr. does not expressly disclose, but it is understood that the individual players or teams of players alternate on offense and defense. Additionally Carr teaches players alternating on offense and defense and a team on offense attempting to score and a team on defense attempting to prevent the other team from scoring (see column 7, lines 21-23; the game is played competitively).

Regarding claim 22, James, Sr. as modified above further shows a score is achieved for a disc that hits the target (12; see figure 9).

Regarding claim 23, James, Sr. shows the target (12) is a container and the players attempt to throw the discs into the container (see figure 9).

Regarding claim 24, James, Sr. as modified in view of Carr further shows that additional discs are provided in order to avoid the player continuously retrieving the thrown disc (see column 7, lines 21-31). Therefore, Carr anticipates the retrieval of the thrown discs, but prefers to provide additional discs. In addition to the above teachings, Carr shows that additional tosses of the flying saucers may be permitted (see column 8, lines 4-5). Performing the additional tosses will require the players to retrieve the flying discs.

Regarding claim 25, James, Sr. shows the target (12) is a container. James, Sr. does not disclose expressly if the players stand around and each equidistant from the container. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to stand in an equidistant position around the container/target, because Applicant has not disclosed that standing in an equidistant position around the container, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform

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equally well with either the player position taught by James, Sr. or the claimed player position because both player positions perform the same function of allow the players to toss or throw the flying disc at the target. Therefore, it would have been an obvious matter of design choice to modify James, Sr. to obtain the invention as specified in claim 25.

Regarding claim 26, James, Sr. shows a plurality of targets (12), wherein the targets can have any shape e.g. toroidal, square, hexagonal or other polygonal shapes (see column 5, lines 15-23). The broadest reasonable interpretation of *a soccer goal* would include the plurality of targets (12).

Regarding claim 27, James, Sr. shows the identifying indicia can be color (see column 5, lines 10-14).

2. Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over well-known game of dodgeball and Rakonjac (5,776,021).

Regarding claims 28-30, applicant is basically defining a form of dodgeball, a game in which a person having control of a ball throws the ball at one or more of the members of a group of players standing within the game area, in an attempt to strike them with the ball. Applicant has merely substituted the ball for a FRISBEE. Such is taught in the Rakonjac reference (see column 1, lines 59-64 also column 3, lines 21-32 of the Rakonjac reference).

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 19-30 have been considered but are moot in view of the new ground(s) of rejection.

With regards to claim 19, it should be noted that applicant has used an incorrect "status identifier" for claim 19. Claim 19 is a "new" claim not an "original" claim. With regards to claim

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28, as indicated above applicant has merely substituted a disc for a ball in order to play a form of dodgeball. Additionally, applicant's attention is brought to the Non-Patent Literature "Wolverine Sports-Flying Disc Games". A variety of different games have been disclosed using discs.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12 August 2005



**MITRA ARYANPOUR**  
**PRIMARY EXAMINER**